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No. 02-516

In the Supreme Court of the United States

Jennifer Gratz, et al

Petitioners

V

Lee Bollinger, et al

Respondents

On Write of Certiorari to the United States Sixth Circuit Court of Appeals

---

Brief Amicus Curiae of Duane C. Ellison, Pro se, in support of Petitioner

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INTEREST OF AMICUS CURIAE

Your amici curiae is a professor of history at Montgomery College in Rockville, Maryland and a member of various regional and national scholarly organizations comprised of professors, graduate students, researchers, and administrators throughout the United States. Your amici fully embraces the principle of equal opportunity. Because of this commitment to equal opportunity for all, your amici opposes racial, ethnic, and sex-based preferences in faculty hiring and student admission.

He is deeply concerned with the effects that the advocacy and institutionalization of racial, ethnic, and sex-based preferences have had on the fundamental tenets of our society and particularly in higher education.

Your amici has a particular interest in quantitative social science. Consequently, he has an interest in ensuring the methodological and statistical validity of data used in the evaluation of public policy. In this brief your amici does not represent the views of any organization or person, other than himself.

STATEMENT

Your amici submits this brief to set forth his disagreement with the conclusion reached by the United States District Court below, that there is "solid evidence" that racial and ethnic diversity have educational benefits, and that the specific policies of the University of Michigan (UM) at issue in this case, have such benefits. His position is that one of the principle pieces of evidence used by UM and relied upon by the trial court, a study done by UM's interim Dean, Patricia Gurin (Gurin Report) (see internet URL at http://www.umich.edu/~urel/admissions/legal/expert/gurintoc.html) is scientifically invalid and does not serve to support the points for which it is cited. Dr. Robert Lerner and Dr. Althea Nagai, have released a comprehensive study, published by the Center for Equal Opportunity in Washington, D.C., critiquing the Gurin Report. (See Lerner & Nagai, *A Critique of the Expert Report of Patricia Gurin in Gratz v Bollinger*, May 7, 2001; available at (http://www.ceousa.org/) This report forms the basis for much of this brief. While your amici does not seek to demonstrate here that there may not be a correlation

between racial/ethnic integration and academic performance, he does argue that the Gurin Report fails to make this correlation.

Your amici's interest in the accuracy of data used in the Gurin Report and in the admissions policy of UM in reliance thereon includes the racial classifications. Your amici holds that racial and ethnic classification is so fraught with peril, that this in itself invalidates the report and suggests reasons for disallowing such classifications.

ARGUMENT

I. THE GURIN REPORT IS SO METHODOLOGICALLY FLAWED THAT IT CANNOT BE CONSIDERED TO CARRY ANY WEIGHT AS COMPETENT EVIDENCE.

In the area of social science research a red flag is immediately seen in any work that purports to find a correlation between two variables but can offer no rational basis for that correlation. Hence if a study purports to find a correlation between the presence of black haired students among blond haired students and improvement in the scores of all students in college algebra classes, the wary reader should begin by asking WHY? It is not intuitively evident that the color of one's

hair would affect the overall performance of students sharing that hair color or of a different color. This would be true of any alleged correlation drawn on the basis of say, eye color or skin color. All are biologically determined. Nor is there a correlation between such biological factors and performance within the common and shared experience of teachers and school administrators. Being foreign to both intuitive logic and experience such a purported correlation is to be subject to great scrutiny for it assumes that a biological constant (skin color in the instant case) has an impact upon a social function - education; and furthermore that the impact is a positive, "beneficial" one.

A. THE GURIN REPORT FAILS TO SHOW STATISTICALLY SIGNIFICANT RELATIONSHIPS BETTWEEN THE RACIAL AND ETHNIC COMPOSITION OF A STUDENT BODY AND GURIN'S "EDUCATIONAL BENEFITS."

There are many design, measurement, sampling, and statistical flaws in the Gurin Study. The statistical findings are inconsistent and in many instances trivially weak. Gurin defines her own idiosyncratic diversity variables, which she labels "learning outcomes" and "democracy outcomes," to measure the benefits off diversity. But, Gurin finds no statistical correlation between a racially and ethnically

diverse student body and her "learning outcomes" and "democracy outcomes." Her statistical output shows that taking an ethnic studies course, participating in a diversity workshop, discussing minority issues, and other measures yield exceedingly weak correlations with learning and democracy outcomes, at least some of the time. At other times, she finds nothing, no statistical correlation. Statistically, taking an ethnic studies course, attending a diversity workshop, and having minority race friends are only weakly correlated with the racial and ethnic make-up of the student body. (See Lerner & Nagai "Critique," at p. 36).

B. THE GURIN REPORT FAILS TO EMPLOY STANDARD TESTS OF RELIABILITY AND VALIDITY TO CHECK MEASUREMENTS.

Gurin has not subjected her idiosyncratic "learning" and democracy" measures to standard statistical tests of reliability and validity. (*id*, at pp. 22-27). Common academic survey practice is to employ the wording of questions and possible responses used frequently by large survey research organizations (e.g., Roper, NORC, Gallup) where they have gone through test-retest and validity

checks, or inventories developed in academic research that have been established as statistically valid. Gurin's work lacks these standard controls, making it likely that her statistical findings are in fact spurious and the conclusions inferred from the data are unwarranted. (*id.* at pp. 27-28).

All of Gurin's measurements of whether preferential racial diversity is working as claimed consist of unverified answers to survey questions by students. Yet the answers that Gurin counts as supporting her claim are such things as being involved in a program to clean up the environment (*id.* at p. 26) and other attitudes that are most closely correlated with having a particular political outlook. Exhibiting one or another set of political views is not evidence of having learned academic material, yet Gurin constantly equates the two.

C. THE SURVEYS RELIED UPON IN THE GURIN REPORT DO NOT MEET WIDELY ACCEPTED STANDARDS OF SAMPLING AND RESPONSE RATES.

The bulk of Professor Gurin's analysis is based on the Cooperative Institutional Research Program (CIRP) dataset that compares schools

and students across the country. This dataset is not a random sample of either schools or students. Its respondents consist of a group of volunteers. Findings from such a dataset must not be generalized statistically to the larger population, as this would violate any probability correlation being reached. Nevertheless the Gurin Report does so.

D. THE GURIN REPORT'S SURVEY DOES NOT PROVIDE FOR A CONTROL GROUP TO COMPARE WITH THE EXPERIMENTAL GROUP.

There are two additional surveys of students from which data is used in the Gurin Report. Both are from students at the University of Michigan. But there is no school that serves as a comparison (i.e., control) group. Without a control group being measured along with an experimental group, no distinctions can be validly drawn and any findings based thereon should be ignored. Nevertheless, the Gurin Report in direct violation of this requirement proceeds to draw correlations.

Further, it is logically impossible to answer the basic question Gurin claims to be investigating - whether preferential racial diversity at the University of Michigan improves the quality of education there - by

comparing the University of Michigan to the University of Michigan. In no way can such surveys reveal what the results would be if the University of Michigan did not have its present level of racial preference. The control or comparison group should have consisted of students at some other school without racially-based admission standards, but no such control group was used.

E. THE GURIN REPORT'S STATISTICAL EXCLUSION OF ASIANS IS A FATAL DESIGN FLAW.

Gurin's sample of respondents is very incomplete. Asians are missing. Analysis is performed only on white, black and Hispanic respondents, although Gurin measures a school's diversity as the percentage of students of color: "students of color" being black, Hispanic, American Indian, *and* Asian. Gurin does not explain her lack of interest in students of Asian descent, although such students are approximately as numerous at UM as black and Hispanic students (*id.* at p. 35). To ignore such a sizeable group in a statistical study that purports to include them among the beneficiaries is a glaring omission at the least. Since Gurin brings into play the presence of Asian students as part of her definition of "structural diversity," that

is, the actual racial composition of the school, it was imperative that she analyze them as a separate group as she did with blacks and Hispanics (*id.*)

Moreover the report does not indicate how race was determined among the respondents. There is no standard legal basis for classifying race and the default method of determination is the self-identity of the subject. However, the self-identity of any subject is in turn determined by the number of "Racial/Ethnic Identity" choices which he/she can check off in the boxes provided on a questionnaire. How, for example, would "Tiger" Woods, legendary professional golfer, fit into the narrow ethnic confines offered respondents in the data? Many Native American tribes have qualifications for inclusion that require only a $1/16^{th}$ blood lineage to a known ancestor, which has led to situations in which blond haired, blue eyed people with distinctly Polish sounding family names qualifying for designation as members of a Native American tribe. This problem is so important that it is treated more fully below.

The Gurin Report also ignores CIRP respondents from historically black colleges. She notes this omission, but does not justify or explain

it. Other academic researchers have found that blacks at predominantly white institutions fared less well academically than black students at historically black colleges, controlling for other factors. (see Joseph B. Berger & Jeffrey F. Milem, "Exploring the impact of historically Black colleges in promoting the development of undergraduates' self-concept," *Journal of College Student Development*, 41 (4) July-Aug. 2000: 381-394.)

Another series of studies by Pascarella and others found that on standardized measures of reading comprehension, mathematics, critical thinking, writing skills, and overall achievement, the two groups scored about the same, but blacks at predominantly white institutions fared worse with regards to scientific reasoning skills, and self-reported gains in understanding the arts, the humanities and the sciences. (Louise Bohr, Ernest T. Pascarella, Amaury Nora & Patrick T. Terenzini, "Do Black students learn more at historically Black or predominantly White colleges?" *Journal of College Student Development* 36 (1) Jan-Feb 1955: 75-85 &Ernest T. Pascarella, Marcia Edison, Amaury Nora, Linda Serra Hagedorn & Patricks Terenzini, "Additional Evidence on the *(5)* Cognitive Effects of

College Racial Composition," *Journal of College Student Development.* 37 Sep - Oct 1996: 494-501; Lamont Flowers and Ernest T. Pascarella, "Cognitive Effects of College Racial Composition on African American Students after 3 years of College," *Journal of College Student Development* 40 (6) Nov - Dec 1999: 669 677).

It is clear that the data Gurin worked with - and she presumably selected that data which best supports her case - had not shown others in the field that there are educational benefits from racial diversity. Gurin was certainly aware that prior analyses of the CIRP data had failed to demonstrate any link between racial diversity and educational outcomes. These studies had been published in 1993 by Alexander Astin, (Alexander W.Astin, *What Matters in College: Four Critical Years Revisited.* San Francisco: Jossey-Bass, 1993) the chief architect of the CIRP who has published regular analyses of the data for three decades and who came to very different conclusions (*id.* at pp 36-37).

F. THERE ARE NO QUANTIFIABLE CRITERIA FOR EDUCATIONAL OUTCOMES IN THE GURIN REPORT

Both the reliability and validity of a study are greatly enhanced to the degree in which changes or correlations can be quantified and reduced to numbers. Generally accepted tests of student achievement such as the ACT, LSAT, do precisely that. For that reason such tests are deemed to have great validity and reliability. The Gurin report on the other hand purports to measure rather subjective factors such as attitudes, propensities and desires, rather than in objective outcomes involving performance. While it is perfectly valid in a social science study to measure these subjective factors, it is not valid to draw a conclusion that these indicate any form of performance.

If it was Gurin's intent to demonstrate that the average class grade of students taking say, a calculus class improves significantly when a college campus is ethnically diverse or that overall scores on the Graduate Record Examination increased significantly among students at ethnically diverse colleges and universities than that report would have measured outcomes normally associated with the term "academic achievement." The report however fails to do this.

Only a few of the outcomes measured by the report - those of civic

engagement and racial/ethnic engagement - are related to some of the combinations of the variables used to determine on-campus diversity (taking an ethnic studies class, discussing racial issues, attending a diversity workshop, socializing with those from other racial/ethnic groups, and having close friends not of one's race/ethnicity). Hence, although the relationships are statistically significant any inference to be drawn from them is very weak. The social values measured, such as joining a community action program, etc. do not correlate with even the performance professed - i. e., actually joining a community action program, etc. They merely measure a very intangible "desire."

It is further noted that within the UM surveys, the number of students is so large and so many variables are entered into the equations as to erode any reliable correlation. Any trivially small effect would be picked up as statistically significant, even if it is just a chance phenomenon.

G. THE GURIN REPORT IGNORES ONE OF ITS ACKNOWLEDGED VARIABLES: EQUAL STATUS CONTACT.

The Gurin Report holds that diversity is beneficial *if* there is equal

status contact among groups, but the report does not test for the latter. To omit a variable which a researcher claims is crucial to the conclusions reached is more than a glaring omission. It is another red flag which casts strong doubt on the validity and reliability of the report. Racial and ethnic preferences in admissions indicate that unequal intellectual ability among students and thus unequal status is predicted by race/ethnicity. It would not therefore be difficult for students to conclude that in UM admissions, some races/ethn. groups are "more equal than others."

Nor is it clear what quantity of students in each desired ethnic category must be present on campus in order for the desired outcomes to be achieved. The Report fails to tell us what number or percentage of each ethnic category it must have for the desired outcomes to be achieved. Nor does it even hint at what ethnic "mix" must be present in order for the outcomes to be reached. The term "critical mass" is frequently heard in defining the number of minority students desired. One wonders how this could ever be achieved by, say Native Americans whose overall numbers are small within the general population. In effect the UM proposes drafting a blank academic

check in which after this Court signature appears others will fill in the numbers.

II. DIVERSITY POLICIES REQUIRE GOVERNMENTAL ENTITIES TO DEFINE RACIAL AND ETHNIC CATEGORIES WHICH ARE INHERENTLY ARBITRARY AND STANDARD LESS AND THUS SUBJECT TO MANIPULATION AT THE WHIM OF AUTHORITIES

Accepting diversity policies as constitutionally legitimate introduces complexity not possessed by any race-neutral policies. A working definition of the proper degree of diversity needed in a student body requires decisions to be made about 1) the relevant racial and ethnic categories to be included, 2) which subgroups are assigned to which racial or ethnic category, 3) the assignment of individual applicants to their respective group memberships, 4) the proportion of individuals in each group that is needed to comprise a truly diverse student body and 5) the standard of "under representation" used to determine the correct proportion of individuals in the relevant categories. These determinations require decisions to be made that are based on arbitrary, ill-defined, and standardless criteria.

A. RACIAL AND ETHNIC CLASSIFICATIONS ARE

INHERENTLY AMBIGUOUS

There is no biological ("scientific") basis for defining racial and ethnic groups. Social science regards racial and ethnic groups as social constructs. The American Anthropological Association, and the American Sociological Association, both define race and ethnicity as socially constructed categories, not essentialist determinations.(see their respective Web Pages at http://www.aaanet.stmts/racepp.htm and http://www.asanet.org/footnotes/septoct02/indextwo.html) As the National Academy of Science reports, the dominant perspective in the social sciences is that "race and ethnicity are social constructions" that vary over time (Peter Skerry, *op. cit.* at p. 44).

The arbitrariness of classification can be seen in the changing definitions used by the Federal Government. The Federal Government in 1978 through OMB Directive No. 15 required all government agencies to report numbers for the following racial and ethnic categories: Caucasian, African American, Asian/Pacific Islander (API), Native American, and Hispanic. According to political scientist Peter Skerry (Peter Skerry, *Counting on the Census: Group Identity and the Evasion of Politics*. Washington, D.C. Brookings Institution

Press, 2000, p. 38), OMB civil servants, without prior debate or expert testimony, set up these particular categories. The Hispanic-origin question is there because they were ordered by their political superiors to put it there and not for any scientific reason. As Skerry also reports, the OMB has expressly stated that this classification is not to be taken as in any way scientific (*id.* at p.46).

In preparing for the 2000 Census, interest group pressure obtained the separation of classifying Asians from that of Pacific Islanders and the inclusion of a new Native Hawaiian category, rejecting efforts to combine Native Hawaiian with American Indians and Alaska natives, again for essentially political reasons (*id.* at p. 73). More generally, the 2000 Census had for the first time allowed respondents to choose multiracial categories, including 57 possible combinations of six single-race categories (white, black, American Indian and Alaskan Native, Asian, Native Hawaiian and other Pacific Islander, and "Some Other Race"). As historian Hugh Davis Graham points out, adding Hispanic ethnicity to the racial mix allows for a possible 126 categories (Hugh D Graham, *Collision Course: The Strange Convergance of Affirmative Action and Immigration Policy in*

America: New York, Oxford Univ. Press, p. 195).

In an important series of studies, political scientist George La Noue has shown the chaos that results from governmental policies of racial and ethnic classification as it applies to small business procurement. La Noue and Sullivan report that in 1973, the Small Business Administration (SBA) considered blacks, American Indians, Spanish-Americans, Asian-Americans, and Puerto Ricans as "presumptively disadvantaged (George R. La Noue & John C. Sullivan, "Gross Presumptions: Determining Group Eligibility for Federal Procurement Preferences," *Santa Clara Law Review,* Vol. 41, No. I, 2000, p. 120). In 1978 Congress Amended the act to define the presumptively disadvantaged as blacks, Hispanics, and Native Americans. The exclusion of Asian-Americans was never explained. Later, the SBA decided to add certain groups of Asian Americans as presumptively disadvantaged: these included U.S. citizens from Japan, China, the Philippines, Vietnam Korea, Samoa, Guam, the U.S. Trust Territory of the Pacific, Northern Mariana's, Laos (which was then dropped and subsequently reinstated), Cambodia, and Taiwan (at p. 126). To add to the complexity, in response to various petitions, Iranians were

rejected, but Asian Indians, Tongans, Sri Lankans, Burmans, Thais, Malays, Singaporeans, Pakistanis, and Bangladeshis, were accepted. Also not included on the SBA preferred list are U. S. citizens from Afghanistan, Azerbaijan, Kazakhstan, Kyrgyzstan, Turkmenistan, Uzbekistan, and Tajikistan (pp. 127-129, 153)

The broader categories themselves are staggeringly vague. The SBA admitted it had no working definition of Hispanic or Asian American, or an explanation as to why their categories should stop at the Khyber Pass, which separates Afghanistan from Pakistan. Thus a Pashtun living in Pakistan is classified as an Asian and receives preferential treatment, while a Pashtun living in Afghanistan is classified as white and receives no preference. La Noue and Sullivan also point out that Basques in France are classified as white while those living in Spain are classified as Hispanic (id. at p. 157).

La Noue and Sullivan conclude: "Drawing the lines based on racial or ethnic group membership for the purposes of including or excluding persons as beneficiaries of public programs is one of the most dangerous powers a government can possess. Political polarization and group enmity are almost certain results." (*id.* at p.

137).

B. THE SAME CONFUSIONS AND AMBIGUITIES FOUND IN GOVERNMENT AGENCIES EXIST IN RESEARCH STUDIES OF CAMPUS DIVERSITY.

Although there has been no study of the same process in educational admissions as detailed above, the problem of ascertaining the correct proportions of racial and ethnic groups fully applies to educational admissions. This arbitrariness is expressed in research on the purported effects of student diversity. One way to see this is by considering the research done on student body diversity. Lerner & Nagai point out that how a concept is to be measured is a critical part of the research process. For example, Gurin defines structural diversity in a student body as consisting of the proportion of students "of color" which is the sum of African-American, Asian, Hispanic and Native American" divided by the total student body size (Lerner and Nagai, "Critique..." at p. 35). This assumes that the diversity effect of adding one more Asian student to the mix is the same as the diversity effect of one additional African-American student. The definition itself leads to illogical conclusions because the maximum amount of diversity is 50 percent of the student body. A student body

consisting half-of Asians and half of whites would have the same maximum diversity as one that was 1/6 black, 1/6 Asian, 1/6 Hispanic and half white. Obviously, these are two very different mixtures of students and should lead to very different "diversity" results, assuming that diversity matters at all.

This exclusion is neatly paralleled by the Gurin Report's use of Alexander Astin's CIRP database, which omitted the categories "Cuban-Americans," "Central American," and "South American" Hispanics from the original intake questionnaire of students when asking about their ethnicity (*id.* at pp. 24, & 59).

Other studies of diversity include only blacks and white students in their purview. Thus Bowen and Bok exclude Hispanic and Asian applicants for favored admission and enrollees despite the book's paean to diversity. Although these authors ask their respondents very general questions on diversity, their analysis is limited to the responses of black and white students, omitting Asians and Hispanics entirely (see *Robert Lerner, "The Empire Strikes Back," CEO Policy Brief, The Center for Equal Oppportunity, Nov., 1998* at p. 18).

Another study of diversity, by political scientists Rothman, Lipset,

and Nevitte, reach important conclusions about the impact of diversity on student, faculty, and administrator attitudes but limits its published conclusions to the proportion of blacks, although it reports preliminary results from examining the percentage of Asians among student enrollees. (Stanley Rothman et al, "Does Enrollment Diversity Improve University Education?" *International Journal of Public Opinion Research,* Vol. 15, No. 1 - forthcoming, 2003 at pp 7 - 25). They find that student satisfaction with the quality of their education, the prevalence of serious student work effort, and overall satisfaction with their college experience are all inversely related to the proportion of black students among their student enrollment (ibid. at p. 19).

C. THE CONFUSIONS AND AMBIGUITIES OR RACIAL AND ETHNIC DEFINITIONS ARE INHERENT IN COLLEGES AND PROFESSIONAL SCHOOL ADMISSIONS POLICIES

Different institutions include different student groups in their admissions policies by arbitrary categorizations. An excellent example of the arbitrariness of the ethnic categories as used in admissions is provided by sociologist Fredrick Lynch in his case study of how diversity functions at the university of Michigan. (Frederick R. Lynch, *The Diversity Machine*: New York, Simon &

Schuster, Inc., 1998) UM openly claims on its web site that each school within the university is free to decide for itself how diversity is to be achieved (http://www.umich.edu/~urel/admissions/faqs/q&a/html). This obviously means that each school is free to set up its own set of relevant racial and ethnic categories.

In the search for Hispanics at UM, Cubans were excluded from preferred graduate admissions (but not from undergraduate admissions) as being considered "Hispanic" and thus receiving admissions preference apparently because they were too wealthy (*id.* at p. 278). When Lynch asked about the removal of Cubans from the Hispanic category, he reported that the only response was nervous Laughter. (*id.* at p. 302) In an interview with Lynch, the associate dean of literature, science and the arts admitted, "We equate diversity with skin color . . . We play silly games (*id.* at p. 304)."

The University of Washington Law School is another example. The Center for Equal Opportunity (CEO) requested and obtained data from that institution on its ethnic classification of students. As part of the original dataset provided by the law school, applicant records included both an applicant's racial-ethnic self-identification, and the

law schools re-classification (re-coding, in the statistical parlance), of the ethnic identity into UW's unique set of categories. The law school categories included the following: Asian, African American, White, Hispanic, and *Filipino*. There is no explanation why Filipinos are singled out as a separate category. Native Hawaiians, however, are lumped with Japanese, Chinese, Pakistanis, and other ethnic groups from the Asian and Pacific region under the larger Asian-Pacific Islander category. (University of Washington Law School Documents in the possession of Dr. Robert Lerner)

The American Association of Medical Colleges (AAMC) until 1997 classified Native Hawaiian applicants as Asian/Pacific Islanders (along with such groups as Japanese, Chinese Filipinos, Pakistanis, Guamainans, and Samoans to name a few). After that, Native Hawaiians, but not other Pacific Island groups were places with Native Alaskans and American Indians as part of the Native American group. Moving Native Hawaiians into the latter group made them one of the AAMC's recognized underrepresented Minorities. (AAMC, at p. 15 cited in Lerner and Nagai, "Critique" at p.56). Meanwhile, in its statistical reporting of data, the American

Association of Law Schools subsumes Pacific Islanders under "Asians," and considers the latter to be underrepresented. (see http://www.aals.org/statistics/index.html.)

E. ASSIGNING INDIVIDUALS TO SPECIFIC RACIAL AND ETHNIC CATEGORIES IS COMPLETELY ARBITRARY & THEREBY SUBJECT TO CHANGE FOR POLITICAL REASONS.

At UM, targeted minority identity supercedes other identities, presumably in order to elevate the total count of "targeted minorities." In one case involving a faculty member of mixed ethnicity, the university initially designated her as Hispanic because of Cuban origin, but then withdrew the Hispanic label because she was Jewish, but then subsequently relabeled her Hispanic when she was granted tenure (Lynch, *op cit.* at p.304).

At the University of Washington Law School, the same procedure as at UM seems to apply-targeted minority identity of an individual supercedes all others. Self-identified bi- and multi racial applicants are re-classified by the university, so to increase the numbers of blacks and Hispanics (op cit. documents in the possession of Dr. Robert Lerner).

CONCLUSION

Taken together, these points (and additional ones in the Lerner & Nagai Critique) make it clear that important public policy decisions and/or modifications of important constitutional protections must not be decided on evidence as shaky as the Gurin Report. Common sense says that a court should be wary of evidence produced for the litigation by one of the parties own employees. Professor Gurin is not exactly an unbiased source. While it is entirely possible that such a witness would produce credible evidence the evidence must withstand scrutiny. The Gurin Report does not.

The myriad of problems with racial and ethnic classifications make it clear that governmental policies at any level should not rest on such vague and ill-defined classifications as race and ethnicity. Such policies will lead to a never-ending series of arbitrary determinations and unjust results.

CERTIFICATE OF SERVICE

I certify that three bound copies of the foregoing amicus curiae brief was mailed to all parties at the following addresses, via U.S. Post, first class, postage prepaid, this sixteenth day of January, 2003.

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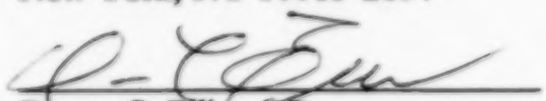

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